

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 03-Cr-110

MARCUS SHAWTEL NESBITT,

Movant.

DECISION AND ORDER

Movant Marcus Shawtel Nesbitt (“Nesbitt”), filed a motion to stay and “abey.” By his motions, he seeks to preserve objections to his sentence under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. 220 (2005). Under controlling Seventh Circuit case law, Nesbitt may not challenge his sentence under *Apprendi*, *Blakely*, or *Booker*, because those cases do not apply retroactively to sentences such as his. *See McReynolds v. United States*, 397 F.3d 479, 481 (7th Cir.), *cert. denied*, 125 S.Ct. 2559 (2005) (regarding *Booker*); *Simpson v. United States*, 376 F.3d 679, 681-82 (7th Cir. 2004) (regarding *Blakely*).

While, at least implicitly, acknowledging that precedent, Nesbitt is apparently hopeful that the Supreme Court will rule or that Congress will legislate that such rulings are

retroactive. If either occurs, Nesbitt's motion is part of the record. However, at this juncture, Nesbitt is not entitled to relief.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Nesbitt's motion to stay and "abey" (Docket No. 98) is **DENIED**.

Dated at Milwaukee, Wisconsin this 3rd day of August, 2006.

BY THE COURT

s/ Rudolph T. Randa
Hon. Rudolph T. Randa
Chief Judge